BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.4403 of 2018
and
Crl.M.P.(MD)No.2152 of 2018

M.Mohan ... Petitioner/Accused No.1

-Vs-

The Sub Registrar,
No.II, Joint Sub Registrar Office,
Marthandam,
Kuzhithurai.
(Kaliyakavilai Police Station unit)
... Respondent/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the private complaint filed before the learned Judicial Magistrate, No.I, Kuzhithurai in C.C.No.75 of 2013 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.D.Selvanayagam
For Respondent : Mr.R.Suyambulinga Bharathi
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.75 of 2013 on the file of the learned judicial Magistrate, No.I, Kuzhithurai, initiated by the respondent for the offence punishable under Section 64 of Indian Stamp Act, 1899 and Section 82 of Registration Act, 1908.

2. The learned counsel for the petitioner submitted that the respondent lodged a complaint alleging that the petitioner violated Sections 27 & 64 of Indian Stamp Act, 1899, by not paying the actual Stamp duty of Rs.3,75,239/- wantonly and wilfully.

3. He further submitted that to attract the offence as alleged by the respondent there is absolutely no essential ingredients are glaringly absence. As such, the complaint lodged by the respondent is unsustainable. Further, against the fixation of the stamp duty under Section 47-A of the Indian Stamp Act, 1899 further appeal is provided for appeal under Section 47 (10) of the Indian Stamp Act before the Chief Controlling Revenue Authority. Therefore, the fixation of Rs.3,75,239/- was alleged by the petitioner is subject to adjudication. Infact, the respondent initiated proceedings under Section 47 (A) of Indian Stamp Act and on that condition,

the document which was registered by the petitioner is also released infavour of the petitioner. He further submitted that under Section 82 of Registration Act, the respondent cannot initiate any criminal prosecution and as such, present complaint cannot be sustainable as against the petitioner. He also relied upon the judgment reported in, 1)**AIR 1924 Patna 754** 2)Judgment passed in **Crl.Misc.No.M-44170 of 2007** by the **Punjab-Haryana High Court.**

4. The learned Government Advocate (Crl.Side) submitted that the complaint is very much maintainable to prosecute the petitioner for the offence under Section 64 of Indian Stamp Act, 1899 and Section 82 of Registration Act, 1908. The petitioner is a first accused and he evaded the Stamp Duty to the tune of Rs.3,75,239/- and thereby, committed offence. He further submitted that all points raised by the petitioner only can be considered by during the trial before the Court below. Therefore, he prays to dismissal of the quash petition.

5. Heard Mr.D.Selvanayagam, learned counsel for the petitioner and Mr.R.Suyambulinga Bharathi, learned Government Advocate (Crl.Side).

6. The petitioner arrayed as first accused in the private complaint lodged by the respondent in Crime No.75/2013. The crux of the complaint is that the petitioner did not pay the stamp duty to the tune of Rs.3,75,239/- wantonly and willfully.

7. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of **Mt.Gobindia and others Vs. King Emperor** reported in **AIR 1924 Patna 754** which was held that the Sub-Registrar has no jurisdiction to enquire as regards the truth or falsity of any recital in a deed. The proceeding or enquiry in Section 82 (a) must be a proceeding or enquiry as prescribed by the Act.

8. The other judgment held that the Act nowhere prescribes any enquiry by the Registration Officer as regards the truth or falsity of any recital in a deed. All that the Registering Officer is required to enquire into as to whether the document represented before him for registration was or was not executed by the person by whom it purports to have been executed the enquiries prescribed are those provided for in Section 34 and 35 of the Registration Act. Therefore, the Sub-Registrar had no jurisdiction to enquire as regards truth or falsity of any recital in the deed and enquire as contemplated by under Section 82. In this regard, it is relevant to under Section 82 of the Registration Act, which reads as follows:-

"*82. **Penalty for making false statements, delivering false copies of translations, false***

personation, and abetment.-

Whoever-

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding [under this Act or the rules made thereunder] a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any preceding or enquiry under this Act ; or

(d) abets anything made punishable by this Act,

-shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both."

9. A perusal of the above provision reveals that a person, who makes a false statement or delivers false copies or translations, or falsely impersonates another person or abets anything punishable under the Registration Act is liable for penalty.

10. In the case of hand allegations in that the petitioner got registered a sale deed for the least value and evaded the stamp duty to the tune of Rs.3,75,239/-. Therefore, the petitioner is liable to be dealt with under the Indian Stamp Act. He should make up the deficiency in the stamp duty under Section 47-A of the Indian Stamp Act. Thereafter, invoking the said provision and conditionally the document was also released infavour of the petitioner. Therefore, the entire criminal proceedings lodged as against the petitioner under the Stamp Act as well as the Registration Act is liable to be quashed and the petitioner cannot be prosecuted under the Stamp Act as well as the Registration Act.

11. In view of the above discussion, this Criminal Original Petition is allowed. The proceedings in C.C.No.75 of 2013 on the file of the learned judicial Magistrate, No.I, Kuzhithurai is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1.The Judicial Magistrate, No.I,
Kuzhithurai.

2.The Sub Registrar,
No.II, Joint Sub Registrar Office,
Marthandam,
Kuzhithurai.

3.The Section Officer,-2 COPIES
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-90169[F] dated 27/09/2019)

Crl.O.P.(MD)No.4403 of 2018
and
Crl.M.P.(MD)No.2152 of 2018
26.09.2019

_KM/(22.10.2019) 4P 6C